

IN THE SENATE OF THE UNITED STATES.

APRIL 29, 1858.—Ordered to be printed.

Mr. MALLORY made the following

REPORT.

[To accompany Bill S. 222.]

The Committee on Naval Affairs, to whom was referred the petition of Henry Etting, a purser in the United States navy, have had the same under consideration, and report:

From departmental communications, filed with the papers in this case, it appears that Mr. Etting was purser of the frigate *Macedonian*, the flag-ship on the coast of Africa, from the 7th of April, 1843, to the 4th of July, 1845; that during that period several courts-martial were ordered by the commander-in-chief, Commodore Perry, of which Lieutenant J. C. Rich, of the marine corps, was appointed judge advocate, and the service performed by him was rendered in a situation where no one could be found so capable, and that for said service Lieutenant Rich presented vouchers, approved by the captain of the *Macedonian* and the commander-in-chief of the squadron, to the aggregate amount of \$1,098 51, which were promptly paid by the petitioner, as they were severally presented, at the termination of each respective trial. The petitioner, on his return from the coast of Africa, presented the vouchers, with the accounts of the ship, to the Fourth Auditor of the Treasury, who subsequently informed him as follows:

"I observe that you paid a considerable sum to Lieutenant Rich, of the marine corps, for his services as judge advocate, which must necessarily be disallowed, as by the second section of the army appropriation act, passed on the 23d August, 1842, it is declared that no officer in any branch of the public service shall receive any extra compensation or allowance for any service he may render."

The section of the act of 1842, referred to by the Fourth Auditor, is as follows: "That no officer in any branch of the public service, or any other person whose salary, pay, or emoluments is or are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatsoever, unless the same shall be authorized by law, and the appropriation therefor ex-

PLICITLY set forth that it is for such additional pay, extra allowance or compensation."

The petitioner alleges that he was ignorant of the prohibition contained in the army appropriation bill of 1842, above recited, and that he was governed by previous regulation and precedents sanctioned by the department, and that the payments were made by him in good faith, upon vouchers in proper form, under the approval of the presidents of the courts and the commander of the squadron, and prays that he may be credited with the amount which still stands charged against him on the books of the Treasury Department.

Your committee, upon a full consideration of all the facts in the case, and the statements of the Fourth Auditor, that he had no authority to demand a restoration of the amount to the treasury from the officer to whom it had been paid, and "the service having really been rendered by Mr. Rich, in a situation where no one could be found so capable, and when if an inferior person had been employed the same amount would have been paid him," are of the opinion that exception should be made by Congress from the operation of the act of 1842 for the relief of the petitioner, and accordingly report the accompanying bill, with a recommendation for its passage.